STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield of Vermont and	)	GMCB-001-22rr
The Vermont Health Plan Large Group Filings	)	GMCB-002-22rr

OFFICE OF THE HEALTH CARE ADVOCATE MEMORANDUM IN LIEU OF HEARING

The Office of the Health Care Advocate (HCA) thanks the Green Mountain Care Board (Board) for the opportunity to respond to the Blue Cross Blue Shield of Vermont and The Vermont Health Plan (collectively, BCBSVT) 2022 large group rate filings (Filings). If BCBSVT's proposed rate increase is implemented, the premiums of 6,396 Vermonters will increase by, on average, 7.9%.[1]

BCBSVT does not offer the legally required evidence to justify the proposed rate change. Particularly given the ongoing public health and economic crises, BCBSVT's strong reserve position, and BCBSVT's historical practice, since 2014, of only offering actuarial and financial evidence to justify a proposed rate, the Board should evaluate BCBSVT's request stringently in favor of protecting consumer affordability and access and holding BCBSVT responsible for compliance with the law.[2]

Therefore, the HCA respectfully requests the Board to find that BCBSVT has failed to meet its obligation to justify the proposed 7.9% rate increase.

I. STATUTORY BACKGROUND

BCBSVT bears the burden of demonstrating that its proposed rate increase meets the multi-faceted test governing the lawfulness of a major medical rate change.[3] Specifically, BCBSVT

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[1] GMCB-002-22rr, Lewis & Ellis Actuarial Mem. at 2.
[2] The Board may consider factors such as historical non-compliance with the relevant law at its discretion. 18 V.S.A. § 9375(b)(6); 8 V.S.A § 4062(a)(3) and GMCB Rule 2.000 § 2.401.
[3] GMCB Rule 2.000 § 2.104(c).

must show that the proposed rate increase is affordable; promotes quality care; promotes access to health care; protects insurer solvency; is not unjust, unfair, inequitable, misleading, or contrary to law; and is not excessive, inadequate, or unfairly discriminatory.[4] When deciding whether to approve, modify, or disapprove a rate request, the Board looks to whether the insurer offered sufficient evidence to meet the criteria listed above.[5]

Vermont law also directs the Board to consider changes in health care delivery, changes in payment methods and amounts, and other issues at its discretion when evaluating a rate change.[6] Lastly, Vermont law directs the Board to evaluate whether BCBSVT has met its statutory obligation to provide coverage to Vermonters "at minimal cost under efficient and economical management."[7]

The Board accepts comments from the public and from the HCA on all topics relevant to the proposed rate, and from the Department of Financial Regulation (DFR) on the limited subject of the impact of the filing on the insurer's solvency and reserves.[8]

The Board is not bound by the views of DFR, the public, or the HCA but must consider them. The Board is also not bound by the opinion of its consulting actuary.[9]

The Board may modify the proposed rate or any element of the proposed rate.[10]

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[4] 8 V.S.A § 4062(a)(3); GMCB Rule 2.000 § 2.401.
[5] Id; GMCB Rule 2.000 § 2.104(c); See e.g., GMCB-016-14rr, Decision at 4 (disapproving an insurer's proposed administrative costs and contribution to reserve based on the insurer failing to meet "its burden for the requested increase…").
[6] 18 V.S.A. § 9375(b)(6).
[7] 8 V.S.A. § 4512(c); 8 V.S.A. § 4584(c).
[8] 8 V.S.A § 4062(a)(2)(B); 8 V.S.A §4062(c); 8 V.S.A § 4062(e)(1)(B).
[9] See 8 V.S.A § 4062.
[10] E.g., GMCB-009-18rr, Decision at 17 (reducing a proposed rate in recognition that "health care costs remain unaffordable for too many Vermonters, impeding their access to care"); GMCB-016-14rr, Decision at 4 (disapproving an insurer's proposed administrative costs and contribution to reserve based on the insurer failing to meet "its burden for the requested increase…").

II. BCBSVT FAILED TO CARRY ITS BURDEN WITH RESPECT TO EACH CRITERION A PROPOSED RATE CHANGE MUST MEET UNDER VERMONT LAW

BCBSVT decided to only offer evidence that the proposed 7.9% rate increase is actuarially and financially justified. It failed to offer any evidence, let alone sufficient evidence, to meet its burden to prove that the proposed 7.9% rate increase satisfies the enumerated factors in section 4062. Rather, BCBSVT only offered evidence arguing that the proposed rate increase protects insurer solvency and is not excessive, inadequate, or unfairly discriminatory even though this evidence was flawed and insufficient to meet its burden of proof as we discuss below.

The record contains no evidence that the proposed rate is affordable; that it promotes quality care; or that it promotes access to health care. This is a fatal flaw. Vermont law requires BCBSVT to do more to justify its proposed rate increase.[11]

A. BCBSVT has not demonstrated that the proposed increase is affordable to Vermonters

The proposed rate increase will be borne by Vermonters and Vermont businesses who were already struggling to afford health insurance premium before the emergence of severe inflationary pressures. Fifty-one percent of uninsured Vermonters report that cost is "absolutely the only reason" for not purchasing health insurance.[12] "Seventy-six percent [of Vermonters] with access to [employer sponsored insurance (ESI)] have not enrolled in their employer's plan due to cost."[13] A 7.9% premium increase will only make this product less affordable to Vermonters and Vermont businesses.

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[11] 8 V.S.A § 4062(a)(3); GMCB Rule 2.000 § 2.401.
[12] VT Dept. of Health, VERMONT HOUSEHOLD HEALTH INSURANCE SURVEY 2021, 35 (2022), https://www.healthvermont.gov/sites/default/files/documents/pdf/HSVR-VHHIS-2021-Report.pdf.
[13] Id. at 31.

BCBSVT's actuarial memorandum lacks any discussion or analysis of how the proposed rate increase will impact Vermonters and Vermont businesses. Rather, it only includes actuarial justifications of the proposed manual rating formula. At best, this justification captures half of the affordability equation - the relationship of price relative to production cost. Such an analysis, however, fails to account for consumer affordability or put differently, the relationship of price and demand.

Vermont law requires entities such as BCBSVT to justify that the proposed rate change is affordable and Board precedent has consistently reinforced this requirement in addition to acknowledging tensions within the concept of affordability itself and between consumer affordability and other rate review factors. Despite these facts, BCBSVT has again chosen to act as if the affordability prong relates solely to price relative to production cost. Silence is not a valid means of justification, and a lack of any analysis is not reasonable.

In sum, the Filings fail to offer *any* evidence that the proposed rate increase is affordable for consumers or that BCBSVT attempted a balancing of the tensions inherent in the concept of affordability as contained in section 4062.

B. BCBSVT has not demonstrated that the proposed increase promotes access to care

One of the fundamental components of access to care is Vermonters' ability to pay for needed care.[14] Vermonters already struggled to access care due to cost before the Covid-19 crisis and the emergence of current inflationary pressures. Vermont businesses are also challenged by

[14] E.g., Ronald Andersen, Pamela Davidson, & Sebastian Baumeister, CHANGING THE US HEALTH CARE SYSTEM: KEY ISSUES IN HEALTH SERVICES POLICY AND MANAGEMENT 39 (Gerald Kominski ed., 2014), https://www.researchgate.net/profile/Sebastian_Baumeister/publication/306016804_Improving_Access_to_Care/data/57aace8508ae3765c3b61180/Andersen2014-Improving-Access-to-Care-in-Kominski-Changing-the-US-Health-Care-System.pdf; VT Dept. of Health, supra, at 57.

premium cost growth. Businesses respond to increased health insurance costs by either reducing benefits or decreasing worker wages.[15]

The proposed rate increase would reduce access to care in either case. If a business reduces worker wages, workers are less able to afford care. On the other hand, if a business reduces health benefits, this results in more Vermonters being underinsured. Underinsured Vermonters with ESI, delay seeking care at a significantly higher rate than Vermonters with adequate insurance.[16] Thus, access to care is also reduced by employers reducing health insurance benefits.

BCBSVT failed to offer any evidence how the proposed 7.9% increase promotes access to care. It is our understanding that the federal government and the Vermont Department of Financial Regulation (DFR) ensures health insurance products meet minimum network adequacy standards. We are unable to find such evidence in the record nor are we aware of any motions for the Board to take administrative notice that BCBSVT meets such standards.

However, such evidence, assuming it was in the record, which it is not, speaks to only half of the concept of access to care. Network adequacy is a necessary component of access to care but it is not sufficient - a provider network can be massive but if no subscriber can afford to access it the size of the provider network is irrelevant. In short, network adequacy must be balanced with whether Vermonters can afford to use the network.

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[15] Neeraj Sood, & Arleen Leibowitz, Wage and Benefit Changes in Response to Rising Health Insurance Costs, National Bureau of Economic Research Working Paper No. 11063, https://papers.nber.org/papers/w11063 (2005).
[16] Vt. Dep't of Health, supra, at 29-30; Liz Hamel, Cailey Munana, & Mollyann Brodie, Kaiser Family Found./LA Times Survey of Adults with Employer-Sponsored Insurance, https://www.kff.org/private-insurance/report/kaiser-family-foundation-la-times-survey-of-adults-with-employer-sponsored-insurance/ (2019) (documenting that 40% of persons with employer coverage report problems paying medical bill or difficulty affording their premiums. 51% of respondents reported that they or someone in their family have skipped or postponed needed care or medications or relied on home remedies instead of seeking care because of cost).

BCBSVT's failure to offer *any* evidence that the proposed rate increase would "promote access to care" from the perspective of consumer use is fatal to the proposed rate given BCBSVT's burden of proof.

C. BCBSVT has not demonstrated that the proposed rate promotes quality of care.

BCBSVT has not demonstrated that the proposed rate promotes quality care. Aside from two sentences about the OneCare Vermont coordination fee, BCBSVT failed to detail any programs for this book of business that encourage members to use preventive care or that incentivize patients and providers to use the appropriate care at the appropriate time.

BCBSVT failure to offer sufficient evidence that the proposed rate increase would "promote quality of care" is fatal to the proposed rate given BCBSVT's burden of proof.

D. BCBSVT has not demonstrated that the proposed increase is not excessive, inadequate, or unfairly discriminatory.

Lewis and Ellis (L&E) questioned whether BCBSVT's assumed mental health utilization trend of 10% per year "would even be possible" and recommended reducing the rate to 5% per year.[17] We agree that BCBSVT's forecasted mental health utilization trend of 10% per year is excessive, inadequate, or unfairly discriminatory. Further, although we agree with L&E that a 5% per-year mental health utilization trend is reasonable, the burden is on the BCBSVT and not the Board to prove that its proposed rate increase not excessive

In this case, the proposed rate is excessive. As such, BCBSVT has not met its burden of proof.

[17] GMCB-002-22rr, Lewis & Ellis Actuarial Mem. at 5.

E. BCBSVT has not demonstrated that the proposed increase is needed to protect its solvency

DFR noted in its opinion of the Filings that it "does not expect the proposed rate will have a significant impact on [DFR's] overall solvency assessment of BCBSVT."[18]

DFR does *not* note, however, the substantial monies BCBSVT is likely to receive in the near term. There are three separate sources of money that BCBSVT has or can reasonably expect to receive in the near term. First, BCBSVT will likely receive $11 million (minus attorney's fees and costs) in resolution of its claims against the federal government to recover unpaid risk corridor monies because of a recent U.S. Supreme Court decision in a substantially similar case: Maine Community Health Option v. U.S.,140 S.Ct. 1308 (2020). Second, BCBSVT will likely receive approximately $7.2 million (minus attorney's fees and costs) from its action to recover unpaid cost sharing reduction (CSR) monies: Blue Cross & Blue Shield of Vermont v. U.S., No. 1:18-CV-00373 (Fed. Cl.). From these two lawsuits, BCBSVT is reasonably certain to receive roughly $18.2 million in the near term. On top of that $18.2 million, BCBSVT may recover monies in the future connected to litigation or settlement with Allianz Global Investors related to catastrophic pension losses that reduced its risk based capital (RBC) by roughly 163 points.[19]

With DFR's solvency opinion and the above cash influxes as a backdrop, we note that sole piece of evidence BCBSVT offers to justify its contribution to reserves (CTR) is a letter from BCBSVT management directing BCBSVT actuaries to propose specific CTRs for the BCBSVT Cost Plus Groups, the BCBSVT Insured Large Groups, and the TVHP insured groups, 0.375%, 1.5%, and 2% respectively.[20] BCBSVT management cites as justification for this decision its

[18] GMCB-002-22rr, VT Dep't Fin. Reg. Solvency Op. at 1.
[19] GMCB-005-21rr, Order & Decision at 11.
[20] GMCB-002-22rr, Actuarial Mem. at 33; GMCB-002-22rr, SERFF Filing at Appendix A.

philosophy that that the proposed CTR amount align with BCBSVT's "long term" CTR strategy and that this strategy allows BCBSVT "navigate short-term fluctuations.'[21]

We are skeptical of the veracity of this claim as these books of business have consistently underperformed both when viewed in isolation and compared to other BCBSVT books of business. In the table below, we compare the proposed CTR request for the ACA market and the large group market with the actual CTR for these two markets for the last several years. Four items bear noting when reading the below table. First, the GMCB has generally made roughly similar CTR reductions for both the ACA and large group markets during the period examined. Second, unlike in the ACA market, BCBSVT exercises substantial discretion ("underwriting" discretion) when setting the premium for a specific large group. Third, whereas premiums are set at the book of business level, BCBSVT's solvency is measured at the organizational level.[22] Lastly, the numbers we present in the table are either drawn from BCBSVT's own statements or derivable using simple arithmetic from said statements.[23]

Year	Filed CTR	ACA Market Actual CTR	Large Group Market Actual CTR	Variance - Filed to ACA Actual	Variance - Filed to Large Group Actual
2017	2.0%	1.0%	-5.3%	-50.0%	-365.0%
2018	2.0%	-1.6%	-8.5%	-180.0%	-525.0%
2019	1.5%	-0.7%	-6.0%	-146.7%	-500.0%
2020	1.5%	5.2%	0.7%	246.7%	-53.3%
2021	1.5%	No Data	-13.6%	No Data	-1006.7%

Neither Board-ordered reductions nor random year-to-year variation can adequately explain the large differences between filed and actual CTR either within a market or between markets.

[21] Id.

[22] This disconnect between the scale premium is set and solvency is measured is one source of the concern of market cross-subsidization.

[23] GMCB-002-22rr, Actuarial Mem. at 3; GMCB-006-21rr, Actuarial Mem. at 6.

BCBSVT has offered no explanation for the observed variance in the large group market other than that the variance indicates "a consistent absence of conservatism in the factors underlying the filing" and that BCBSVT has fixed past problems with its rating methodology.[24]

Again, the only evidence that BCBSVT offered to justify that its proposed CTR is a letter from BCBSVT management stating BCBSVT's "long term" CTR philosophy. This singular piece of evidence, even when taken at face value, is insufficient to justify the proposed rate increase. It is unclear, however, whether this piece of evidence should be taken at face value. BCBSVT's apparent demonstrated difficulties actualizing its "long term" CTR philosophy, DFR's lack of solvency concerns, and the fact that BCBSVT is near the top of its RBC range as reported in its publicly available 2021 Annual Statement, suggest that it should not be taken at face value.[25]

Either taking the evidence offered on face value or considering the evidence's questionable truth, BCSVT has not justified that its proposed CTR is necessary to protect solvency. BCBSVT bears the burden to justify its proposed increase protects insurer solvency and it has failed to do so.

F. BCBSVT's proposed rate is contrary to law.

Vermont law requires a health insurance carrier to justify how its proposed rate comports with the multi-faceted test set out in rule and statute. It is not the duty of Board, L&E, DFR, or the HCA to meet BCBSVT's burden in this regard. While BCBSVT might wish that proposed rates were valid in Vermont unless some party could show them problematic, this is not how proposed rate increases are dealt with in Vermont as detailed in GMCB Rule 2.000 § 2.104(c).

[24] GMCB-002-22rr, Actuarial Mem. at 3,4.

[25] BCBSVT disclosed that its authorized control level risk-based capital (ACL) is $22,364,423. It also disclosed that its total adjusted capital is $135,818,807. RBC is calculated by dividing total adjusted capital by ACL.

As discussed above, BCBSVT has failed to offer evidence that the proposed rate change complies with Vermont law. The implementation of the proposed rate change would necessarily be contrary to law. As such, the Filings are fatally deficient.

III. CONCLUSION

BCBSVT has not demonstrated that the proposed rate is affordable, promotes access to care, promotes quality care, is not unfair, unjust, inequitable, or misleading, and is not excessive, inadequate, or unfairly discriminatory. Additionally, the proposed rate increase will only exacerbate Vermonters' health care affordability struggles during a time of severe hardship for Vermonters and Vermont businesses.

Dated at Montpelier, Vermont this 3rd Day of May, 2022.

/s/ Eric Schultheis
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CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above Memorandum In Lieu Of Hearing on Michael Barber, Green Mountain Care Board General Counsel; Laura Beliveau, Green Mountain Care Board Staff Attorney; Christina McLaughlin, Green Mountain Care Board Health Policy Analyst; and Gregory Boulbol, representative of Blue Cross Blue Shield of Vermont and The Vermont Health Plan by electronic mail, delivery receipt requested, this 3rd day of May, 2022.

/s/ Eric Schultheis

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